

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 RICHARD EVALOBO and PRISCILLA
5 SANTOS CORTEZ,

6 Plaintiffs,

7 v.

8 ALDRIDGE PITE, LLP; REBECCA P.
9 KERN, ESQUIRE; and U.S. BANK, N.A.,

10 Defendants.

Case No. 2:16-cv-00539-APG-VCF

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

(ECF No. 23)

11 I previously dismissed the plaintiffs' complaint and gave them leave to file an amended
12 complaint if they could cure the defects I pointed out to them. ECF No. 19. Subsequently, the
13 plaintiffs filed a motion seeking leave to file an amended complaint. ECF No. 20. I denied that
14 request because their proposed amended complaint did not cure the defects I had identified for
15 them. ECF No. 21. In that second order, entered on January 13, 2017, I wrote that I would give
16 the plaintiffs "one final chance to amend their complaint and address the issues detailed in my
17 prior Order (ECF No. 19)," and that the plaintiffs "must file the amended complaint within 14
18 days of entry of this order." *Id.* at 2. The plaintiffs did not do so. On February 27, the
19 defendants filed a motion to dismiss the case for failure to prosecute. ECF No. 23. Because the
20 plaintiffs have repeatedly failed to comply with my orders, I grant that motion.

21 Where a plaintiff "fails to prosecute or comply with these rules or a court order, a
22 defendant may move to dismiss the action or any claim against it." Fed. R. Civ. P. 41(b). Failure
23 to file an amended complaint within the time allotted by the court can be grounds to dismiss
24 under Rule 41(b). *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 988 (9th Cir. 1999).

25 The plaintiffs have had several opportunities to file a proper complaint but have not done
26 so. They contend they were recently out of the country for several weeks, causing them to miss
27 the filing deadline I imposed in my January 13 order. But even in the face of the defendants'
28

1 motion to dismiss, the plaintiffs still do not propose a proper amended complaint. Rather, they
2 use their opposition to engage in a lengthy diatribe against the legal system. Their opposition
3 clearly demonstrates that they have no intention of following my orders to file a proper amended
4 complaint.

5 Based upon the plaintiffs' repeated failure to file an amended complaint curing the
6 defects that I previously pointed out, I will dismiss this case without prejudice.

7 IT IS THEREFORE ORDERED that the defendants' motion to dismiss for failure to
8 prosecute (**ECF No. 23**) is **GRANTED**. The plaintiffs' claims are dismissed without prejudice.
9 The clerk of court is directed to close this case.

10 DATED this 12th day of April, 2017.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE